

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL ROBERT ARMSTRONG, et al

Plaintiff,

CASE NO. 02-73492

v.

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

CORPORAL DAN CADEZ, et al

Defendant,

_____ /

ORDER DENYING
(1) PLAINTIFFS' OUT-OF-TIME MOTION FOR RECONSIDERATION RE
IMPOUNDMENT OF TRAILER;
(2) PLAINTIFFS' OUT-OF-TIME MOTION FOR SUMMARY JUDGMENT

Plaintiffs seek reconsideration of this Court's May 15, 2005 Order granting defendants summary judgment as to the seizure and sale of a trailer by individual Melvindale Police Department defendants Cadez, Kopek and Easton. Plaintiffs' motion was filed January 4, 2007, more than 18 months after the Court's Order was entered.

Local Rule 7(g), states that a Motion for Reconsideration must be filed within 10 days after entry of the judgment or order. This Motion is well beyond the 10 day limit.

Further, Plaintiffs' attempt to also mask this as a motion of summary judgment pursuant to Federal Rules of Civil Procedure 56, 54(b) and 60(b) (based on excusable neglect) does not succeed. Plaintiffs mention these Rules on page 4 of their brief (¶ 14), but do not discuss them in their brief.

Rule 56 covers Summary Judgment, but does not authorize filing an out of time summary

judgment motion whenever a party decides to file one.

An out-of-time motion under Rule 54(b) – Judgment Upon Multiple Claims or Involving Multiple Parties – does not break the rules as to timely filing of motions.

Nor does Plaintiffs’ request for a Rule 60(b) Relief From Judgment or Order win the day. Rule 60(b) states in pertinent part:

the motion shall be made within a reasonable time, and for reasons (1) [mistake, inadvertence, surprise, or excusable neglect], (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken.

Here, we are well past the one year deadline.

Accordingly, the Court denies:

1. Plaintiffs’ Out-of-Time Motion for Reconsideration re Impoundment of Trailer, and
2. Plaintiffs’ Out-of-Time Motion for Summary Judgment.

SO ORDERED.

s/Paul D. Borman

PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: January 31, 2007

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on January 31, 2007.

s/Denise Goodine

Case Manager